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GEORGIA AND THE UNITED STATES.

House of Representatives—March 3, 1827.

[Report of the Select Committee, relative to the Georgia controversy, concluded.]

The right to regulate trade and intercourse with the Indians, was one of the first Federal rights exercised after the commencement of the Revolution. On the 12th July, 1775, it was resolved by the Continental Congress, "that Commissioners be appointed by this Congress to superintend Indian Affairs on behalf of these Colonies," and the Indians were divided by the same resolution into the Northern, Middle, and Southern departments. In the latter department the Creek Indians were included.

By the articles of Confederation, Congress had the exclusive power of making treaties, at that time, and, it is believed, at all times, the only mode, in time of peace, in which the relations with Indian tribes have been conducted by the United States. Congress had also the power of "regulating trade, and managing all affairs with the Indians, not members of any of the States: Provided, that the legislative right of any State, within its own limits, be not infringed or violated." This express proviso, and the proviso implied in the words, "not members of any State," were the sources of much embarrassment under the old Confederation. Georgia, particularly, claimed the right to treat with the Creek Indians concerning peace, lands, and the other objects that usually form the matters of Indian treaties; and, in order to establish her right so to do, she, by the Treaty of Galphinton, in 1785, stipulated that the Indians of the Creek Nation, were "members of the State" of Georgia. In what sense they could have been "members of the State," this Committee does not understand; and the right of a State to enter into these treaties with the Indians, was strenuously resisted by Congress.

At length the Constitution was adopted. The treaty-making power was again vested in the United States. A treaty duly ratified became the supreme law of the land, "any thing in the Constitution or laws of any State to the contrary notwithstanding." By the Confederation, the powers of the Congress for regulating trade, and managing affairs with the Indians, were limited (as has just been observed) by the proviso "that the Legislative right of any State, within its own limits, should not be infringed or violated." No such limitation is found in the Constitution of the U. States. This omission was not undesignedly made. It was one of the changes expressly introduced, to prevent the continued collision of Federal and State powers, which had so long existed, to the injury of the public. The grant of unqualified power to regulate commerce with the Indians, the exclusive right of repelling, by force, their hostile encroachments, and the exclusive power of treating, were necessarily so many infringements upon the jurisdiction of the individual States, and upon the power of the State Legislatures. If any authority be wanted to confirm these principles, it may be found in the 42d number of the Federalist, a paper writen by Mr. Madison. Comparing the powers granted to Congress by the present Constitution, with those of the Confederation, he says, "The regulation of commerce with the Indian tribes is very properly unfettered from those limitations in the Articles of Confederation, which render the provision obscure and contradictory. The power is there restrained to Indians, not members of any State, and is not to violate or infringe the legislative right of any State within its limits. What description of Indians are to be deemed members of a State, is not yet settled; and has been a question of frequent perplexity and contention in the Federal Councils. And how the trade with the Indians, not members of a State, yet residing within its legislative jurisdiction, can be regulated by an external authority, without so far intruding on the internal rights of legislation, is absolutely incomprehensible. This is not the only case in which the Articles of Confederation have inconsiderately endeavored to accomplish impossibilities, to reconcile a partial sovereignty in the Union, with a complete sovereignty in the States; to subvert a mathematical axiom by taking away a part and letting the whole remain."

To the Constitution of the U. States, thus designedly framed on these points, Georgia became a party, and thereby relinquished, if she previously possessed it, all power to treat with the Indians, and all right to exclusive jurisdiction over them.

The powers conferred on the General Government, in reference to the Indians, are to be viewed, not more as confering authority, than as implying and imposing burdens. With their exclusive rights in relation to the Indians, devolved on the United States the great duty of defending the States against savage violence. In the discharge of this duty, is laid the foundation of the Military Establishment of the United States. The first armies raised after the adoption of the Constitution, were for defence against the Indians. And in this way, the older States of the Union, who struggled in their infancy, alone and unaided, against numerous and powerful tribes of savages, have been charged with perhaps the greatest single item of public expenditure, in the fulfilment of the trust and duty of carrying on the relations of the Union with the Indians. But the power and the burden must be reciprocal, and the State which claims the right, by uncontrolled legislation, of causing an Indian war, cannot reasonably call on the Union to sustain the burden of carrying it on.

The first law regulating the intercourse with the Indians, passed after the adoption of the Constitution, was approved July, 1790. After prohibiting the Indian trade to all but licensed persons, it gave to the President the power to make such order respecting the tribes surrounded in their settlements by the citizens of the United States, as to secure an intercourse without license, if he deem proper; and the same law declared that no sale of Indian lands to an individual or a State, whether having the right of pre-emption or not, should be valid, unless made and executed at a public treaty, held under the authority of the United States. The duration of this act was limited to two years, and another law was passed, approved 1st March, 1793, by which the surveying of lands belonging to any Indian tribe, by marking trees, or otherwise, was prohibited. All purchases and grants of land, or claims and titles to land "not made by a Treaty or Convention, entered into pursuant to the Constitution," were declared to "be without validity in equity or law." This act, limited to two years, was supplied by that of May 19, 1796, by the first article of which the Indian boundary line was declared and defined from the mouth of the Cayahoga river, on the lake Erie, to the St. Mary's. At this time the Oconne formed the boundary line between Georgia and the Creeks. By this law, the prohibition of surveys is specifically re-enacted, and all right, title, and claim, of whatsoever nature or kind, of persons settling or surveying lands secured to Indians, by a Treaty, is vested in the United States, on conviction of the offender. This law was limited to three years, and its provisions were substantially re-enacted by that of 3d March, 1799. By the law of 30th March, 1802, the previous legislation on this subject, was re enacted, without limitation of time, and has remained to the present day, and still exists unrepealed.

It is not known to the Committee that, until recently, either Georgia or any other State, has, since the adoption of the Constitution, exercised or claimed the *right to treat with independent tribes of Indians*, except by authority and consent of the United States, or has exercised any act of legislation over them, or has claimed to do any act or thing forbidden by the law of 1802. The Committee believe that the State of Georgia has not only acquiesced, until lately, in the validity of this course of Legislation, but that her intelligent and prominent citizens have given it their express sanction. In the talk of Messrs Campbell and Merriwether, to the Cherokees, in 1823, these gentlemen say, "The sovereignty of the country which you occupy [a considerable part of which is in the State of Georgia] is in the United States alone; no State or Foreign Power can enter into a treaty or compact with you. These privileges have passed away, and your intercourse is restricted exclusively to the United States." In a letter dated March 10, 1824, addressed by the Georgia delegation of Senators and Representatives to the Secretary of War, the Committee understand the delegation to say, that the Cherokees are to be viewed as other Indians, as persons suffered to reside within the Territorial limits of the U. States, and *subject to every restraint, which the policy and power of the General Government require to be imposed on them*, for the interest of the Union, the interest of a particular State, and their own preservation."

From these considerations the Committee are brought to the conclusion that the property in and jurisdiction over the lands occupied by the Creeks within the State of Georgia, are not exclusively possessed by that State, but are subject to the rights guarantied to the Creeks, or reserved to the United States by the Constitution of the United States, by the compact of 1802, by the provisions of law, or by treaty.

It remains only to ask, whether the occupancy of the small portion of lands now in controversy is reserved to the Creek nation, and on what right Georgia claims to survey it.

Georgia claims the right to survey it, under the treaty of the Indian Springs, but the Committee are of opinion that no right nor title could vest under that treaty, for the following reasons, in brief:

First. That treaty was negotiated not only contrary to instructions, but on a basis expressly forbidden by the Executive, when previously submitted for his sanction.

Secondly. The treaty at the Indian Springs was concluded by a party of the Creek nation, not authorized by the Creek nation to treat for the cession of any lands.

Thirdly. The treaty was concluded by a minority, not merely of the principal Chiefs of the nation, but by a minority of the Chiefs present, and without regard to the protest of the Head Chiefs, made by their representative, both before and at the moment of executing the treaty.

Fourthly. Supposing the Commissioners authorized, and the Chiefs empowered to treat, such authority and power could, in no circumstances, extend beyond a cession of the lands occupied by the Chiefs treating, and those who empowered them; whereas, by the treaty of the Indian Springs, a small party assumed to themselves the right to cede away nearly all the lands occupied by the nation.

Fifthly. If the Creek nation was a party to the treaty of the Indian Springs, then it has been declared null and void by the two parties to it, viz. the United States and the Creek nation; if the Creek nation was not a party to it, then it is no treaty at all, for it purports on its face to be negotiated with the Creek nation.

For these reasons, on which the Committee are prevented for want of time from enlarging, they are of opinion that, by a treaty like that of the Indian Springs, the Creek nation could not be divested of its right of occupancy, nor Georgia vested with a right of possession, and that the lands West of the new treaty line having never been ceded away, are reserved to the Creek Indians by the treaty of Washington, and that the survey of them is contrary to law.

The Committee, however, are happy to add, that the inconvenience resulting from this circumstance is much less than was apprehended.

In a letter of Governor Troup, to Messrs. Cobb and Berrien, dated 4th May, 1826, it is stated that, "unless all the sources of information here shall prove erroneous and deceptive, the State (if the validity of the new treaty be admitted) has been defrauded of one million of acres of her best lands." But if the Western boundary of Georgia were run, according to a rigorous construction of the compact of 1802, it would pass in some points East of the Chattahouchie, and thus give her a boundary which she might consider less advantageous than the line drawn by the treaty of Washington. If the Western boundary line be run according to the interpretation put upon the compact by the Commissioners of Alabama, it would leave Georgia less than she now claims. But granting the *ex parte* line, run by the Georgia Commissioners, to be the true Western boundary of the State, the quantity of unceded land, by the only computation the Committee has seen, is 198,632 acres, and that of a poor quality, being about one ninety-eighth part of the lands, the Indian title to which, the United States, in 1802, covenanted to extinguish for Georgia, as soon as it could be done reasonably and peaceably.

The small quantity of land in controversy, and its trifling value, render it probable, that the Indians will agree to cede it. Inasmuch as the quantity depends on the direction which the line between Alabama and Georgia may take, it were to be wished that this line should be first run. It appears, however, that the Executive, from an earnest desire to meet the wishes of Georgia, has instructed the agent to urge the Creeks to a cession of the land East of the line, which Georgia has established for herself. The preliminary steps for this cession require no appropriation; and the Committee deem it inexpedient, by now making an appropriation for the final purchase, either to fix on an inadequate, or an unnecessarily large sum. It is the result of the best view which the Committee have been able to take of the subject, that no legislation upon it is at this time necessary.

In conclusion, the Committee beg leave to observe, that they have given to this important subject all the time and attention they could command, at this advanced stage of the session. They have felt how many great interests are concerned in the subject. The powers of the Union, and the manner in which they have been exercised; the rights and interests of a sovereign State, and the protection due from the strong and the prosperous, to the feeble remnant of a once formidable race. Notwithstanding the collisions of opinion, which can rarely be avoided where such interests are involved, the Committee think it may with justice be avowed, that, in the general result, while the Constitutional powers of the United States have been asserted, the great objects desired by Georgia have been attained, and the public sentiment of the world has not been disregarded, which requires a tenderness and moderation, in disposing of the rights of those, whom Providence has placed, without the means of resistance, at our discretion.

Such are the views which the Committee had prepared themselves to submit to the House. By the message and accompanying documents yesterday referred to the Committee, it appears (if the Governor of Georgia correctly represents the other authorities and People of the State) that the prospect of a prompt and amicable termination of existing difficulties, is less flattering than had been hoped. To the letter of the Secretary of War, informing the Governor that the President, in consequence of the remonstrance and appeal of the Indians, would feel himself compelled, if necessary, to employ all the means under his control to maintain the faith of the nation, by carrying the treaty of Washington into effect, the Governor has returned a direct defiance. Instead of submitting the decision of the question to the tribunal provided by the constitution, he has issued orders to the Attorney and Solicitor General of the State, to take all necessary and legal measures to effect the liberation of the Surveyors, who may be arrested, under the authority of the Government of the United States; and has directed them to bring to justice, by indictment or otherwise, the officers of the United States, or others concerned in arresting the Surveyors, as violators of the peace of Georgia. He has ordered the Major Generals of two divisions of Militia to hold the regiments and battalions within their respective commands, in readiness to repel any hostile invasion of the Territory of Georgia; and he has declared, in substance, that he shall regard the attempt of the U. States to sustain the Indians by force, (which it will become their sacred duty to do, should all other means fail) in the occupation of the lands reserved to them by the treaty of Washington, as an attack upon the Territory, the People and the sovereignty of Georgia.

The Committee will not take upon themselves to express any opinion on the subject of counsels, so much to be deplored. They have no apprehension that the People of Georgia will engage in violent collision with the Union, for the purpose of sustaining a title to a small strip of barren land, acquired under an instrument, which, by a very large majority of the other House of Congress, sanctioned by an almost unanimous vote of this House, has been declared "null and void." If, however, it is necessary to contemplate so disastrous an event, the Committee trust the law of the land will be maintained, and its faith preserved inviolate. The Committee recommend the adoption of the following resolutions:

Resolved, That it is expedient to procure a cession of the Indian lands, in the State of Georgia.

Resolved, That, until such a cession is procured, the law of the land, as set forth in the treaty of Washington, ought to be maintained, by all necessary Constitutional and legal means.

POLITICAL.

From the Richmond Enquirer.

SIGNS OF THE TIMES.

The loss of the printing for the Senate of the U. States, seems to have greatly troubled the spirit of Messrs. Gales & Seaton. They have lost their wonted equanimity of temper, and have forgotten the courteous and dignified style in which they have usually written. From the continued repetition of their long and sorrowful lamentations we were led, a few days since, to fear that our old friends had really suffered some cruel wrong—or, as they wished to have us believe, that some attempts were really making upon the best interests of our country. We have waited day after day for some further developements. But all in vain! Some new notes of maddened passion only succeeds the last that died upon the ear. Anger, revenge, hatred, jealousy, "and all uncharitableness," but mingle their discordant sounds—and the reader discovers after all, that involuntary mirth is succeeding in his heart to misplaced commiseration.

We can assure our readers that we do not take up the pen to enter again into any tiresome discussion with the National Intelligencer. It is worse than idle to reason with a man in a rage. They, no doubt, consider themselves most grievously wronged, and the country in the most imminent danger. And if bold assertions, hard names, and disingenuous arguments, spun out in some three or four columns a day, would prove the fact, they have succeeded most marvellously.—But though we do not mean to engage in any *carte* and *tierce* with our ancient friends, yet, in these quiet times, since the great lawgivers have dispersed, and their long speeches have nearly all been published, we may, perhaps, be excused by such of our readers as are fond of a little amusement, for making a few passing remarks on the "*Signs of the Times*."

We pretend to no *tact* in political soothsaying. We have more than once attempted something in that way; and having failed, we may consider ourselves as effectually cashiered as were Messrs Gales & Seaton by the Senate the other day. We are contented now, to judge of things by the *reality*, and not by the *signs* of them. If, occasionally, we should point our finger to a portentous sign, we beg the reader to draw his own inference, and not throw the responsibility upon us.

It is now clearly ascertained, (and we are sorry at such an expense to Messrs. Gales & Seaton,) that there is a decided, uncompromising majority in the Senate *against* the coalition. Since "the unprincipled minority" has become the majority, ought we not to take this as some *sign* of the sentiments of the *states?* But, indeed it is cruel, that the first indication of this "organized opposition" should be given at such a time and in such a manner! It is unfortunate, that this opposition should light upon the heads of men, "whose respect for the Senate every man of sense knows," and in which "every man of candour will acknowlege," that they "have never been, in any manner deficient!" Men, who may truly be said, *until now*, to have been smooth and courteous to all parties, offending none—more sinned against by the aspirants of the day, than sinning—and especially solicitous to stand well with all! "In sober earnestness" this was a very unkind cut. With individuals, we can most sincerely sympathise. But the miscarriage of the diplomatic politician, excites no such emotion. Yet, one thing is clear, that whatever "*respect*" these gentlemen may have heretofore entertained for the Senate, they have recently forgotten it in their "hasty humor." The evidence of that want of respect is to be found, if we do not mistake the meaning, in the following diplomatic, Intelligencer-like inuendos "An *opposition* to the measures of a government when founded upon principle, is entitled to respect and consideration, even from the Administration to which it is opposed. When founded upon *different* principles, (what *different* principles?) or rather upon *no principle* at all, but that of a combination to obtain *possession of the offices* and patronage of a government, it is *still* useful, because it makes the government look to public opinion." &c.

Would the reader believe that these respectable Editors have become so devotedly attached to *existing* Administrations, as to subjoin to their inuendo, and their mock liberality towards even an unprincipled opposition, the following precious sentence: "We must have good *reasons*, however, before WE engage in an *opposition to an existing administration* of the nature *first* above stated, (*an opposition on sheer principle!*) and we never will, under any circumstances, engage in one of the nature last described." "*Good reasons*," before you act upon *principle*—Good—Good—The Goods of this world are many, thank Heaven! "Reasons"! And what are they the *sign* of here, ye political soothsayers? What is the *reason* Hal, that "a man labors in his vocation?" *Why* should he quit it without *reason?* The word "reasons" has more senses than one, according to the Lexicons and law books. It sometimes means the "consideration" for which a thing is done. And it may require in the eyes of the Editors of the N. Intelligencer a tolerably strong *consideration*, to induce them to abandon an "existing administration," for a struggling Opposition.

We trust in sober earnestness, that our quondam friends of the Intelligencer will not attribute to us, any malicious feeling towards themselves. We have uniformly spoken to them with great candour, and with *all possible respect*; not, perhaps, with the *utmost possible respect*; for, *sometimes* there were particular circumstances which forbad it. We have differed a little about men and measures. We, seeking to act upon *principle*, have sometimes found ourselves with, and sometimes against *existing Administrations*, and for the life of us, we could not have given any other "*reason*" for it. The National Intelligencer has, on the contrary, leaned, from its foundation, in favor of every "existing Administration." The *reason* of this may be founded in peculiar circumstances, into which it is no matter of ours now to enquire.

Among the other amusing things which are pourtrayed by Messrs Gales & Seaton, in their "Signs of the Times," is the following. As they were on the spot, they could speak knowingly, no doubt:

"With respect to the present administration of the government, it will be remembered by all who read this journal, that, at the time of its introduction to office; on its subsequent organization; and at a later date, we have expressed our conviction that the election of the President had been honestly made, and that the President had acted *wisely*, and with exclusive regard to the public interest, *and to the circumstances of his election*, in the appointment of the officers, who preside over the different *departments* of the government, and represent our country abroad. More recently, we have had occasion to say, that, judging the administration by its measures, we believed, for any thing that we could *see* that the election of President by the House of Representatives resulted beneficially to the country, there being *more to approve* than to disapprove in the measures of the *government*. We have yet seen nothing to change this opinion. "Unwarped by party rage," or even by personal attachments, wholly unconnected with the executive administration of the General Government; free from any